IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO.873 OF 1997
IN
LAND ACQUISITION REFERENCE NO.17 OF 1986
IN
LAQ/29/WADHWAN

Bhupendra Champaklal Dalal,
residing at 42, Chitrak,
Altamount Road, Bombay ....Appellant
Ori.Claimant

V/s.

The Special Land Acquisition Officer (5)
Bombay and Bombay Suburban Distrist,
Plot No.212, 1st Floor,
Griha Nirman Bhavan, Bandra (East)
Bombay-400 041. ....Respondents
Ori.Respondent

Mr.Pratik Sakseriya with Mr.N.S. Rodrigues i/b M/s.Desai & Diwanji for the Appellant.

Ms.S.M. Dandekar, A.G.P. for the Respondent.

WITH

APPEAL NO.232 OF 1998
IN
LAND ACQUISITION REFERENCE NO.17 OF 1986
IN
LAQ/29/WADHWAN

The Special Land Acquisition Officer (5)
Bombay and Bombay Suburban Distrist,
Plot No.212, 1st Floor,
Griha Nirman Bhavan, Bandra (East)
Bombay-400 041. ....Appellant
Ori.Respondent

V/s.

Bhupendra Champaklal Dalal,
residing at 42, Chitrak,

Altamount Road, Bombay ....Respondent
Ori.Claimant

Ms.S.M. Dandekar, A.G.P. for the Appellant.

Mr.Pratik Sakseriya with Mr.N.S. Rodrigues i/b M/s.Desai & Diwanji for the Respondent.

**CORAM : DR.S. RADHAKRISHNAN & S.J. VAZIFDAR, JJ.**
**DATED : 9TH MARCH, 2006.**

**ORAL JUDGMENT (PER : S.J. VAZIFDAR, J.) :**

1. For convenience we shall refer to the Appellant in Appeal No.873 of 1997 as the "Appellant" and the Appellant in Appeal No.232 of 1998 as the "S.L.A.O."

2. The above Appeals have been filed by the owner and the Special Land Acquisition Officer (S.L.A.O.) respectively against the order and judgment of the learned single Judge in a Reference under Section 18 of the Land Acquisition Act ( for short "the said Act").

3. As we have decided to dismiss both the Appeals, it is necessary to state the facts only briefly.

4. The Housing Commissioner had proposed to acquire various lands including survey No.9 (part) admeasuring 2 acres 8 gunthas and 5.5 As. (hereinafter referred to as the said land). After the necessary

preliminary enquiries, notification under Sections 4 and 6 and modification thereto various lands including the said land belonging to the Appellant were acquired.

5. The S.L.A.O. by an award dated 23.9.1982 granted compensation at the rate of Rs.5/- per square yard to the Appellant's father. There is no dispute that the said land belongs to the Appellant's father. The compensation of Rs.61,465/- computed at the rate of Rs.5/- per square yard was accepted by the Appellant under protest. Pursuant to his application, the above reference was filed in this Court. The According to the Appellant, the fair value would not be less than Rs.40/- per square yard. The Appellant has however restricted his claim for compensation at the rate of Rs.20/- per square yard. According to the S.L.A.O., the fair value would be Rs.5/- per square yard.

6. The learned Judge partly allowed the reference fixing the rate at Rs.13.50 ps. per sq. yard for the said land which admeasures 10689.60 square yards. The learned Judge also granted 30% solatium on the additional amount with costs and fee of one advocate. The learned Judge directed adjustment of the amount already paid by the S.L.A.O.

7. The Appellant examined himself, one Ramesh Narayan Raikar, Chairman and Managing Director of the Structwel Designers & Consultants Pvt. Ltd., valuer and one Ramakant V. Vaidya. The S.L.A.O. did not examine any witnesses.

8. The Appellant filed a valuation report of the said valuer. The said valuer valued the land at the rate of Rs.13.50 per square yard for residential use, Rs.26.50 per square yard for industrial use and Rs.40/- per square yard for commercial use. He deposed that though he was entitled to claim compensation on the basis of Rs.40/- per square yard being the rate for commercial use, he was restricting his claim to Rs.20/- per square yard. He tendered the certified copies of seven sale instances obtained from the Sub-Registrar of Assurances. The same were received in evidence and marked Exhibit "A" collectively. He also tendered a plan prepared by the valuer. The same was initially marked for identification. It was later marked as Exhibit "C" collectively as the valuer who had prepared the plan proved the same when he has examined.

9. The Appellant described the location of the said land in considerable detail. The evidence in this regard has been accepted by the learned Judge. There

is no cross-examination in this regard. Even before us Ms.Dandekar, the learned A.G.P. appearing on behalf of the S.L.A.O. did not dispute the same. It would be sufficient only to note that the land is situated east of the Kandivali Railway Station and between the railway line and the Western Express Highway. At the material time i.e. in the year 1961, the land was at a walking distance of only three minutes from the railway station. It has now shifted one mile to the north of the said land. Between the railway line and the Western Express Highway is a village which was considerably developed for residential, commercial and industrial purposes. In the vicinity, there were schools and a market place. The land was levelled and was suitable for all three purposes viz. residential, commercial and industrial. The land was unencumbered and had a clear title.

10. There is no effective cross-examination. The only point in the cross-examination was that the witness was unable to produce any documents to show that a part of survey No.9 was used by the military in 1961.

11. The next witness Ramesh Narayan Raikar proved his report and expressly stated that the same was

prepared by him and the contests thereof were correct. He deposed that he personally visited the site, the surrounding area and had collected necessary information including seven sale instances. He stated that he had valued the land at the rate of Rs.40/- per square yard on the basis of the same being put to commercial use. The witness also described the location of the land. He thereafter stated that the land was also suitable for industrial and commercial activities. It is important to note that he admitted that if the acquired land was used only for residential purposes, it would fetch Rs.13.50 per square yard.

12. In the cross-examination, the witness stated that there was no development plan for that area in 1961. A draft development plan was published only in 1964. It is important to note that he admitted in the cross-examination as under : "I have stated that the land was in residential zone on the basis of the observation made by the Land Acquisition Officer in the award." We will deal with the importance of this later.

13. The third witness Ramakant V. Vaidya was examined only to prove one of the sale instances. His evidence clearly proves the sale instance. In any event in view of Section 51(A) of the said Act, we have

proceeded on the basis that what is stated therein is correct.

14. The learned Judge rightly rejected the S.L.A.O's submission to the effect that the valuation report ought not to be accepted in view of the delay in the valuer visiting the land. We would only add to the reasons of the learned Judge which, with great respect, we accept that the cross-examination of the witness has not cast any doubt on the report except to the limited extent, we shall mention shortly. We see no reason to reject the report at least to the extent to which we have relied upon the same.

15. Further the sale instance proved by the Appellant have not been challenged effectively either in the cross-examination or otherwise. We are inclined to agree with the learned Judge that they ought to be accepted. The detailed reasoning of the learned Judge was not even challenged before us. The sale instances indicate various rates at which the lands were sold. The rates varied between Rs.9.50 and Rs.12.50 per square yard. The valuation report, which as we have noted, has been proved in evidence, in paragraph 15 inter-alia notes that the lower prices have been recorded for various reasons including to save the

stamp duty and taxes. It further notes that various valuation reports also indicate an adjustment of various dues which may not be mentioned in the documents. Further there was a time lag between the date of the agreement of sale and the date of execution of the conveyance. Exhibit "A" (collectively) i.e. the sale instances only comprises of conveyances.

16. In the circumstances, the rate fixed by the learned Judge of Rs.13.50 per square yard cannot be said to be unreasonably high. The rate disclosed in the documents itself goes up to Rs.14/- per square yard. In the circumstances, we have no hesitation in dismissing the S.L.A.O's Appeal No.232 of 1998.

17. Mr.Sakseriya, the learned counsel appearing on behalf of the Appellant however submitted that the learned Judge ought to have allowed a rate of Rs.20/- per square yard in view of the fact that the valuer had valued the land at Rs.26.50 per square yard for industrial purposes and Rs.40/- per square yard for commercial purposes. We are unable to agree. It is true that there is no detailed reasoning in this regard in the impugned judgment. The record however does not warrant a rate of Rs.20/- per square yard for more than one reason.

18. The valuation report states that there was no development plan till 1964. It states that it was open therefore for the owners of the lands in that area to use the same for commercial, industrial or residential purposes. The valuer has further stated that generally the value of commercial user is three times that of the residential user and twice as high as that of the industrial user. We will presume for the purpose of this judgment that the presumption is correct. We will presume, as did the learned Judge that the potential user of the land ought to be considered. In other words, we will presume that the land ought to be valued on the basis of commercial and industrial user and not merely on the basis of residential user. This is for the reason that as there was no development plan, it appears, in absence of the evidence to the contrary, that the owners were entitled to put the land to such user as they desired. We will also presume that the basis of computing the commercial user at three times that of residential user is justified as there was no effective cross-examination in that respect as well.

19. It is however, crucial to note that in his cross-examination, the valuer stated :- "I have stated that the land was in residential zone on the basis of

the observation made by the Land Acquisition Officer in the award." However, in the previous sentence, he has admitted that there was no development plan for that area in 1961. The draft development plan was published only in 1964. In that event there was no question of the land being usable only for a particular purpose. The absence of the development plan in fact goes against the Appellant. We are not obliged to presume that the vendors in the sale instances (Exhibit "A" collectively) fixed the price at a lower rate based on the residential user when they could in law have fixed the price on the basis of the industrial or commercial user, which was also permissible. The normal presumption would be that a vendor would sell the property at the best available price. In the absence of zoning, the vendors were not restricted to selling their lands only for residential user.

20. There is yet another flaw in Mr.Sakseriya's submission. We have gone through the sale instances carefully. In fact the sale instances militate against Mr.Sakseriya's contention. For instance in one sale instance, it is clear that where the land had already been put to residential and industrial user, the sale was at the rate of Rs.5.20 per square yard for residential user and Rs.10.20 per square yard for

industrial user. This is clear when we co-relate the operative part of the conveyance with the schedule and the plan annexed to the conveyance. Thus where the property was put to industrial user, the rate was only Rs.10.20 per square yard. The entire basis therefore of the valuation report in this regard fails.

21. In the circumstances, the Appellant in Appeal No.873 of 1997 also fails.

22. In the circumstances, both the Appeals are dismissed. There shall however be no order as to costs.

(DR.S. RADHAKRISHNAN, J.)

(S.J. VAZIFDAR, J.)

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**DATE OF DECISION : 9TH MARCH, 2006**

For Approval and Signature :

**HON'BLE MR.JUSTICE DR.S. RADHAKRISHNAN**

**HON'BLE MR.JUSTICE S.J. VAZIFDAR**

1. Whether Reporters of Local Papers may be allowed to see the judgement ?

2. To be referred to be Reporter or not ?